

(2001) 06 AP CK 0075

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17756 of 2000

V. Shankara Chary

APPELLANT

Vs

State of A.P. and others

RESPONDENT

Date of Decision : 12-06-2001

Acts Referred:

Andhra Pradesh Revised Pension Rules, 1980 — Rule 39, 39(1), 54
Constitution of India, 1950 — Article 136, 14, 226, 227, 235

Citation : (2001) 3 ALT 642

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : Mr. Nooty Rama Mohana Rao, for the Appellant; Government Pleader for Home and Mrs. M. Bhaskara Lakshmi, for the Respondent

Judgement

S.R. NAYAK, J

1. This writ petition is filed by a retired District Munsif assailing the validity of the Letter No.49289/CourtsC1/99-2, dated 29-2-2000 refusing to relax the application of the relevant Andhra Pradesh Revised Pension Rules, 1980, (for short "the revised pension rules") for granting the pensionary benefits to the petitioner by virtue of the power conferred upon it under Rule 54 of the Revised Pension Rules. The background facts that led to filing of this writ petition may be noted briefly as under:

The petitioner while working as District Munsif at Boath, Adilabad District, a departmental enquiry was initiated against him on certain allegations in Roc No.98/94, Vigilance Cell, and after holding the required enquiry, the High Court of Andhra Pradesh, the 2nd respondent herein by its Order dated 30-10-1995 imposed the penalty of compulsory retirement with effect from 31-10-1995 AN as a disciplinary measure. The said order of the High Court has become final in absence of any challenge to it by the petitioner. As the matter stood thus, the petitioner submitted a representation dated 15-9-1998 requesting the 2nd respondent to regularise the periods of suspension i.e., 31-8-1991 to 25-4-1993

and 3-5-1994 to 31-10-1995 for the purpose of entitling him for the pensionary benefits. The High Court on consideration of the request of the petitioner contained in his representation dated 15-9-1998 sympathetically passed an order in Roc No.103/99/ Vigilance Cell, dated 16-7-1999 regularising the above two spells of suspension treating the same as period spent on duty for the specific purpose of pensionary benefits only. There-afterwards, the petitioner sent another representation on 12-11-1999 to the High Court wherein he requested the High Court to relax the application of relevant revised pensionary rules to make up the shortage of one year and six months in the service. Such a request was made to the High Court by the petitioner because under the Revised Pension Rules, minimum ten years service is the qualifying service for one to be eligible to pension and other terminal benefits whereas the petitioner has put in about eight years and seven months of service only including the above noted two spells of periods of suspension regularised by the High Court vide its Order dated 16-7-1999 on humanitarian grounds. On consideration of the above representation of the petitioner dated 12-11-1999, the High Court wrote a letter bearing ROC No.2405/98-BI, dated 29-11-1999 to the Government of Andhra Pradesh, requesting the Government to consider the request of the petitioner for granting him the benefit of service weightage for one year and six months fallen short to enable him to have the pensionary benefits. The letter reads:-

"ROCN0.2405/98-B1. dated 29-11-1999

To

The Secretary to Government, Law (L.A. & J-SC.F) Dept., Hyderabad.

Sir,

Sub :- Public Services- A.P. State Judicial Service- Application of Sri V. Shankara Chary, Retd. Jr. Civil Judge, Nandalur- Forwarded.

Ref :--1. Application dated 12-11-1999 of Sri V. Shankara Chary, Retd. Jr. Civil Judge

2. Lr. Dis. No.9203, dated 19-11-1999 from the District Judge, Cuddapah

I am to forward herewith a copy of the application dated 12-11-1999 submitted by Sri V. Shankara Chary, who was compulsorily retired from service from 31-10-1995 in High Court's Proceedings Order Roc No.98/94-V.C, dated 30-10-1995 (copy enclosed) and to state that in the present representation the retired officer has requested for issue of orders, as a special case, giving him the benefit of weightage in service for one year and 6 months short fallen for the purpose of meeting the requirement of 10 years service to get the pensionary benefits.

In this connection I am to state that the officer was appointed as District Mimsif and he assumed charge of the said office on 1-4-1987. By virtue of the orders issued in Proc. Order Roc No.500/ 90-B. Spl. (SC), dated 29-8-1991 (Copy

enclosed) he was kept under suspension in public interest pending departmental enquiry against him. The departmental enquiry culminated in the imposition of the punishment of reduction in rank by 30 places in the seniority list of District Munsifs and he was reinstated into service from 26-4-1993 in Proc. Order Roc No.500/90-B. Spl (SC), dated 22-4-1993 (Copy enclosed), on revocation of the period of suspension from 31-8-1991 to 25-4-1993 and the period of suspension from 31-8-1991 to 25-4-1993 was ordered to be treated as the period spent on duty for the specific purpose of pensionary benefits only, in Proc. Order Roc No. 103/99-V.C., dated 16-7-1999 (Copy enclosed).

By another order issued in Roc No.98/ 94-B Spl (SC), dated 29-4-1994 (Copy enclosed) he was kept under suspension in the public interest with immediate effect pending departmental enquiry. The departmental enquiry culminated in the imposition of the punishment of compulsory retirement from service. The period of his suspension from 3-5-1994 to 31-10-1995 AN was ordered to be treated as the period spent on duty for the specific purpose of pensionary benefits only.

On his retirement he had submitted his pension papers. The total service from 1-4-1987 to 31-10-1995 was then arrived at 8 years and 7 months and the periods of suspension from 1-9-1991 to 25-4-1993 (1 year 7 months 25 days) and from 3-5-1994 to 31-10-1995 (1 year 5 months 29 days) were not counted for the purpose of pensionary benefits and therefore the total qualifying service was taken as 5 years 5 months and 6 days, for which he was sanctioned a service Gratuity of Rs.25,830/- in lumpsum and a retirement Gratuity of Rs.13,860/- in lumpsum (vide A.G's Verification Report NO.P18/IV-S-3214/SP/744/99-02, dated 15-4-1999 (Copy enclosed). He has now submitted the present representation requesting for weightage of service for one year and six months for the purpose of pensionary benefits. The Service Register of the Retired Officer is sent herewith for ready reference.

I am to request that the Government may be pleased to consider the request of the Retd. Officer and issue orders giving him the benefit of the service weightage for one year and 5 months short fallen to enable him to have the pensionary benefits.

Yours faithfully,

Sd/- Registrar (Admn)

Copy to:

Sri V. Shankara Chary, Retd. District Munsif, H.No. 16/B (II floor), MIGH, Sanjeeva Reddy Nagar, Hyderabad-500 038."

2. On consideration of the representation of the petitioner and the above letter of the High Court, the Government issued the impugned letter bearing No.49289/Cts. CI/99-2, dated 29-02-2000. It reads :

"Government of Andhra Pradesh

Law (L.A. & J-Courts.) Dept.

Letter No.49289/Cts. CI/99-2."

From:

The Secretary to Government, Law (LA&J-Courts) Department, A.P. Secretariat, Hyderabad

To:

The Registrar (Admn) High Court of A.P. Hyderabad Hyderabad: Dated 20-2-2000

Sir,

Sub :--Public Services - Andhra Pradesh State Judicial Service - Sri V. Shankara Chary, Retired Junior Civil Judge, Nandalur- Sanction of pensionary benefits - Reg.

Ref --From the Registrar (Admn.), High Court of A.P. Hyderabad Lr. Roc. No.2405/98-BI, Dated 29-11-1999

I am directed to invite your attention to the reference, cited and to inform that the request of Sri V. Shankara Chary, Retired Junior Civil Judge, Nandalur for relaxation of rules for getting pensionary benefits is not feasible of compliance.

The Service Register of the individual in I volume is returned herewith.

Yours faithfully,

Sd/- For Secretary to Government"

Fence this writ petition for the following relief:-

"For the reasons and in the circumstances stated in the accompanying affidavit, the petitioners herein pray that this Hon"ble Court in the interests of justice be pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari (a) call for allrecords relating to and connected to the letterNo.49289/Courts CI/99-2, dated 29-2-2000 and quash or the same holding it as arbitrary, illegal and violative of provisions of Article 235 of the Constitution (b) consequently direct the 1 st respondent to act upon the recommendations made by the 2nd respondent in its letter dated 29-11-1999 and release all the pensionary and terminal benefits to which the petitioner is entitled together with interest @ 12%p.a. and pass such other or further order or orders as are deemed fit and proper in the circumstances of the case".

3. Sri Nooly Rama Mohana Rao, learned Counsel appearing for the petitioner would contend that under Article 235 of the Constitution, the control of servants and Officers of subordinate judiciary vests in the High Court. The power to prescribe conditions of service is the sole preserve of the High Court and in the instant case, the High Court has exercised this power when it recommended to the Government for giving the petitioner the weightage of one year and six

months vide its letter dated 29-11-1999. In view of the said specific recommendation of the High Court, the Government has no power to veto the recommendation of the High Court. The learned Counsel would maintain that since under Rule 39 of the Revised Pension Rules, the High Court is the competent authority to grant pension and since High Court has recommended for giving the petitioner the weightage of one year and six months, the government is bound to act in accordance with the recommendation of the High Court by force of Article 235 of the Constitution read with Rule 39 of the Revised Pension Rules and it is impermissible for the Government to differ with the recommendation of the High Court under the scheme of Constitution and various judgments of the Apex Court delivered while interpreting the scope and ambit of the power of the High Court under Article 235 of the Constitution.

4. The learned Counsel would also contend that the impugned letter does not contain any reason for refusing relaxation of the rules. Therefore, it should be held to be a non-speaking order. On that count itself, the impugned order cannot be sustained and is liable to be quashed. The learned Counsel for the petitioner would maintain that by force of Article 14 of the Constitution of India and principles of natural justice, the Government is bound to disclose reasons in support of the refusal also, otherwise this Court will not be in a position to appreciate the reasons or factors that weighed with the government in declining to exercise the discretionary power under Rule 54 of Revised Pension Rules in favour of the petitioner.

5. Mrs. M. Bhaskara Lakshmi, learned Standing Counsel for the High Court would reiterate and support the contentions advanced by the learned Counsel for the petitioner. On the other hand, the learned Government Pleader for Home appearing for the Government would first point out that a careful perusal of the letter of the High Court dated 29-11-1999 would clearly show that the High Court did not recommend for giving the petitioner the weightage of one year and six months as claimed by the petitioner's Counsel and the High Court only requested the government to consider the request of the petitioner for relaxation of the Pension Rules so as to enable him to have the pensionary benefits. The learned Government Pleader would also maintain that the power conferred upon the State Government under Rule 54 of the Revised Pension Rules is a discretionary power and it cannot be said that simply because the High Court recommends for relaxation of the Revised Pension Rules in favour of its official or officer, the government is bound to relax the application of the pension rules as a matter of course, and such an interpretation cannot be placed on the provisions of Rule 54 of the Revised Pension Rules.

6. In the light of the above rival contentions of the learned Counsel for the parties, three questions that arise for decision viz.,

(i) whether the High Court vide its letter No.2405/98-BI, dated 29-11-1999 has recommended for giving the petitioner the weightage of one year and six months of service by relaxing the application of the relevant Revised Pension Rules;

- (ii) whether the State Government is bound to relax the application of relevant Revised Pension Rules so as to enable the petitioner to claim pension and pensionary benefits while acting under Rule 54 of the Revised Pension Rules, and
- (iii) whether the impugned letter of the Government dated 29-2-2000 is liable to be quashed on the ground that it is not a speaking order.

A careful reading of the letter of the High Court dated 29-11-1999 shows that except in the last paragraph of the letter, in the remaining paragraphs, the High Court has only referred to the service particulars of the petitioner, imposition of the penalty of compulsory retirement and the regularisation of the above noted two spells of suspension. Nowhere the High Court has opined in the said letter that the petitioner is entitled to seek relaxation of rules u/s 54 of the Revised Pension Rules. However, in the penultimate paragraph of the letter, the High Court while requesting the Government to consider the request of the petitioner requested the Government to "issue orders giving him the benefit of the service weightage for one year five months short fallen to enable him to have the pensionary benefits". This particular request contained in the penultimate paragraph of the letter of the High Court should be understood in the context of the fact-situation of the case. Therefore, it cannot be said that the High Court in its letter dated 29-11-1999 has opined in favour of the petitioner that he is entitled to the relaxation of the relevant pension rules under Rule 54 of the Revised Pension Rules so as to enable him to seek pension and pensionary benefits. Be that as it may, even assuming that the High Court has recommended for relaxation of the relevant pension rules as contended by the learned Counsel for the petitioner is correct, even then it cannot be said the Government under Rule 54 of the Revised Pension Rules is bound to act accordingly and it has no discretion at all to differ with the recommendation of the High Court.

7. Sub-rule (1) of Rule 39 and Rule 54 of the Revised Pension Rules read:

39. Compulsory retirement pension :--(1) A Government servant compulsorily retired from service as a penalty may be granted by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two thirds and not more than full invalid pension or gratuity or both admissible to him on the date of his compulsory retirement.

54. Power to relax :--Where Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, government may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary, for dealing with the case in a just and equitable manner.

8. No doubt the High Court being a competent authority to impose penalty of compulsory retirement on the petitioner is also an authority to grant pension or gratuity I to the petitioner within the limitations specified under sub-rule (1) of

Rule 39 of the Revised Pension Rules. However, it is relevant to note that unless the Government exercises its discretion under Rule 54 of the Rules and grants relaxation, the petitioner is not entitled to pension at all and High Court itself cannot grant pension granting weightage for one year and five months fallen short in the service. Such a power cannot be conceded to the High Court under Rule 39. Under Rule 54, the State Government is the sole donee of the discretionary power and that discretion should be brought to bear on facts and circumstances of each case and the provisions of Rule 54 cannot be interpreted in such away as to fetter the discretion of the donee of the power by an external authority like the High Court despite the fact that under Article 235 of the Constitution of India, the High Court has undoubtedly the administrative control over the servants and officers and personnel of the subordinate judiciary.

9. However, Sri Nooty Rama Mohana Rao, learned Counsel for the petitioner placing reliance on the judgment of the Supreme Court in *The Registrar (Administration), High Court of Orissa, Cuttack Vs. Sisir Kanta Satapathy (Dead) by Lrs. and Another*, , would press into service the contention that the government is bound by the recommendation of the High Court. The learned Counsel would draw our attention specifically to the following observation of the Supreme Court in Para (15) of the above judgment:

".....It is well settled again by a catena of decision of this Court that the recommendation of the High Court is binding on the State Government/Governor (vide para 18 in *State of Haryana Vs. Inder Prakash Anand H.C.S. and Others*,)."

10. The above observation of the Supreme Court has to be understood in the context of the recommendation that may be made by the High Court with regard to major penalties that may be imposed on delinquent officers. In *State of Haryana Vs. Inder Prakash Anand H.C.S. and Others*, , a Four Judge Bench of the Apex Court had an occasion to consider the scope and width of Article 235 of the Constitution. That was the case in which the State Government compulsorily retired a Senior Subordinate Judge though the High Court recommended only for his reversion. In that case the Supreme Court held in paras 15, 16 and 18 thus:

"15. This Court in *The State of West Bengal Vs. Nripendra Nath Bagchi*, said that control vested in the High Court is over the conduct and discipline of the members of the judicial service. Orders passed in disciplinary jurisdiction by the High Court are subject to an appeal as provided in the conditions of service. The High Court further deals with members of the judicial service in accordance with the rules and conditions of service. This Court in *Bagchi* case (supra) said that the word "deal" points to disciplinary and not merely administrative jurisdiction. The order terminating the appointment of a member of the service otherwise than upon his reaching the age fixed for superannuation will be passed by the State Government on the recommendation of the High Court. This is because the High Court is not the authority for appointing, removing, reducing the rank or terminating the service.

16. It is true that the fixation of the age of superannuation is the right of the state Government. The curtailment of that period under rule governing the conditions of service is a matter pertaining to disciplinary control as well as administrative control. Disciplinary control means not merely jurisdiction to award punishment for misconduct. It also embraces the power to determine whether the record of a member of the service is satisfactory or not so as to entitle him to continue in service for the full term till he attains the age of superannuation. Administrative, judicial and disciplinary control over members of the judicial service is vested solely in the High Court. Premature retirement is made in the exercise of administrative and disciplinary jurisdiction. It is administrative because it is decided in public interest to retire him prematurely. It is disciplinary because the decision was taken that he does not deserve to continue in service up to the normal age of superannuation and that it is in the public interest to do so.

18. The control vested in the High Court is that of the High Court is of the opinion that a particular judicial officer is not fit to be retained in service the High Court will communicate that to the Governor because the Governor is the authority to dismiss, remove, reduce in rank or terminate the appointment. In such cases it is the contemplation in the Constitution that the Governor as the head of the State will act in harmony with the recommendation of the High Court. If the recommendation of the High Court is not held to be binding on the State consequences will be unfortunate. It is in public interest that the State will accept the recommendation of the High Court. The vesting complete control over the subordinate judiciary in the High Court leads to this that the decision of the High Court in matters within its jurisdiction will bind the State. "The Government will act on the recommendation of the High Court. That is the broad basis of Article 235."

The underlined observation of the Supreme Court in para (18) is very significant. It is relevant to notice that only those decisions or recommendation of the High Court in matters within its jurisdiction will alone bind the State Government and not all recommendations and decisions of the High Court. Therefore, the question for consideration is whether relaxation of the Revised Pension Rules so as to enable the petitioner to seek pension and pensionary benefits under the provisions of the Andhra Pradesh Revised Pension Rules is a matter within the jurisdiction of the High Court. That power cannot be traced to the power conferred upon the High Court under Article 235 of the Constitution of India as contended by the learned Counsel for the petitioner. The grant of pension and relaxation of pension rules is a covered field by framing the revised pension rules under the proviso to Article 309 of the Constitution of India by the Governor. Under Rule 54, only the State Government is the competent authority to exercise discretion and grant relaxation. If by interpretation, if it is held that under Rule 54 the State Government is bound to relax the relevant Revised Pension Rules so as to enable the petitioner to claim pension and pensionary benefits in terms of the recommendation of the High Court, it would tantamount to amending the

Rule 54 fettering the discretion of the State Government and the discretion conferred on the State Government under Rule 54 would become a kind of mandatory ministerial duty for the State Government to perform. The State Government is a donee of the discretionary power under Rule 54 and the sweep of that power cannot be curtailed or limited in the way and the manner the learned Counsel for the petitioner would suggest.

11. This takes us to the last contention of the learned Counsel for the petitioner that the impugned letter (order) is not a speaking order and therefore on that count itself, it is liable to be interfered with. We find considerable force in this contention.

We have extracted the impugned letter above. The only reason given in the letter is that the request made by the petitioner "is not feasible of compliance". Firstly, we are at a loss to understand how the request is not "feasible of compliance". The word "feasible" as an adjective may mean in different contexts as practicable, possible or loosely speaking, as probable or likely. No other reasons are forthcoming from the impugned letter for refusing to grant relaxation under Rule 54. No doubt in terms of Rule 54, in the event of the Government granting relaxation, it is required to record reasons in writing in support of the relaxation. That does not mean that when the Government refused to grant relaxation, it need not give any reason. The power granted to the State Government under Rule 54 is a statutory power and that power has to be brought to bear on facts and circumstances of each case. In other words, the State Government being the donee of the power should apply its mind to fact situation of each request independently and take a decision under Rule 54 of the Rules. The statutory power under Rule 54 cannot be exercised whimsically or fancifully or arbitrarily or at the dictation of an external authority and its decision either way should be grounded on valid and cogent reasons. Therefore, if the Government does not disclose reasons in support of the decision taken under Rule 54, the reviewing Constitutional Court will not be knowing, what factors or reasons that weighed with the State Government in decision-making under Rule 54. It may be that all the reasons that weighed with the Government in rejecting the request of the petitioner need not be recorded in the impugned letter itself, but at least the reasons should exist in the record of the Government. For the reasons best known to it, the Government has not chosen to file any counter affidavit or placed the relevant records before the Court for its perusal to know whether any valid and cogent reasons existed on record for refusal to grant the request of the petitioner. The object behind the insistence for recording reasons is that the duty to give reasons is a safeguard against arbitrariness, Compulsion of disclosure of reasons guarantees consideration and application of mind to the facts of each case and it minimizes chances of unconscious infiltration of personal bias or unfairness in the conclusion. As quite often said and reiterated that the obligation to record reasons in support of a decision particularly in support of a statutory decision arises out of an obligation partly due to principles of natural justice and partly due to constitutional provisions viz.. Articles 32, 136, 226 and 227 under

which the Constitutional Courts take judicial review of administrative and statutory actions. In that view of the matter, it becomes imperative for this Court to quash the impugned letter (order) issued under Rule 54 of the Revised Pension Rules by the Government solely on the ground that it is not a speaking order and to remand the proceedings to the State Government for fresh consideration of the representation of the petitioner.

12. In the result and for the foregoing reasons, we allow this writ petition in part and quash the impugned letter No.49289/ Courts CI/99-2, dated 29-2-2000. The proceedings now shall stand remitted to the 1st respondent-Government with a direction to reconsider the representation of the petitioner dated 12-11-1999 and the letter of the High Court bearing Roc No.2405/98-BI, dated 29-11-1999 afresh and pass appropriate reasoned order under Rule 54 of the Revised Pension Rules within a period of three months from the date of receipt of a copy of this order. No costs.